

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **Joseph Yount v Diana Yount**  
Docket No. **278890**  
L.C. No. **07-000663-DC**

E. Thomas Fitzgerald, Judge, acting under MCR 7.211(E)(2), orders:

The motion for immediate consideration is GRANTED.

The motion to strike Issue III of appellant's brief is GRANTED. The record on appeal is the trial court record in the case appealed, as well as the record in trial court number 02-2438-DC as allowed by the August 16, 2007, order. Thus, the reference to "public records," including in the statement of argument III in the table of contents and as the principle point of the argument on pages 28-29; Appendix E; and all references to Appendix E, must be stricken.

However, appellant may raise an unpreserved issue in his brief on appeal. *Steward v Panek*, 251 Mich App 546, 554 (2002). This Court may overlook preservation requirements to avoid manifest injustice or if consideration of the issue is necessary to a proper determination of the case. *Id.* See also *Brown v Loveman*, 260 Mich App 576, 599 (2004). This panel makes no decision as to whether this issue falls within one of the preservation exceptions, but will leave that determination to the case call panel.

Therefore, within 14 days of the certification of this order, appellant shall file an amended brief, excising all references to matters outside of the record from Issue III. Appellee may file her brief within 14 days after service of appellant's amended brief.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP - 6 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk